

MT LEGISLATIVE HISTORY

Chapter 602 1981

Bill (H) 765 S _____

Original bill & hist. C

H. Committee on Legisl Govt.

S. Committee on Legisl Govt.

Hearing Date(s) FEB 19 ☒ C

Hearing Date(s) MAR 21 ☒ C

FEB 21 ☒ C

MAR 21 ☒ C

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Date Out FEB 21 ☒ C

MAR 26 ☒ C

Did this bill originate in an interim committee? Yes No

Committee

Report

HOUSE STATE ADMINISTRATION COMMITTEE

48th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 435	Revising the provisions of the PERS act permitting a member to receive retirement benefits for an absence due to illness or injury; certain members apply for disability benefits	2/28/83	Fuller	3/8/83	BE CONCURRED IN	3/10/83
SB 436	Reestablishing the PSC under existing statutory authority & rules; amending various sections of law.	3/2	Blaylock	3/14	3/15 to sub-com. 3/23 AS AMENDED BE CONCURRED IN	3/23
SB 438	Placing certain restrictions on participation in political activities by public officers or employees	2/28	Story	3/9	3/9 to sub-com. 3/18 TABLED AS AMENDED	
SB 452	Authorizing the Dept. of Admin. to administer a statewide citizens suggestions program & to award cost saving proposals.	2/28	Fuller	3/9	AS AMENDED BE CONCURRED IN	3/9
SB 455	Authorizing the state to pay for St. employees' part. in Part. B of Medicare in certain cases; incorp. relevant prov. of Fed. Tax Equity & Fiscal Responsibility Act of 1982.	2/28	Norman	3/9	BE CONCURRED IN	3/9

47TH Legislature (1981)

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 765	To provide for municipal regulation of municipally owned utilities; to establish maximum increases allowed; to require reporting to the	2/14	Donaldson	2/19	DO PASS	2/21
	PSC and the Montana Consumer Counsel.					
HB 769	To provide for an election in a county with a commission form of government on a proposition for filling the position of county	2/14	Hurwitz	2/19	DO NOT PASS	2/21
	sheriff through appointment by a sheriff commission; to allow the creation of a sheriff commission to appoint such sheriff.					
HB 770	To reconcile conflicts regarding municipal ordinance, resolution, and initiative and referendum procedures by specifying the applicability of title 7, Chapter 5, part 42.	2/14	Lory	2/19	DO PASS	2/21
HB 771	Authorizing municipal regulation of public utilities owned by municipalities; removing authority of the PSC over utilities owned, operated, and regulated by municipalities	2/14	Shontz	2/19	TABLED 2/21	

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
February 19, 1981

The Local Government Committee met Thursday, February 19, 1981, at 11:30 a.m. in room 103 of the Capitol. Chairman Bertelsen called the meeting to order and asked the secretary to call the roll. All committee members were present except Rep. Pistoria, who was absent. Staff Researcher Lee Heiman also attended.

HOUSE BILL 765 - sponsored by Gene Donaldson

REP. DONALDSON said he is from District 29 in Lewis and Clark County. Throughout the legislative session we are often confronted with the decision as to how much regulation and control we need as private citizens, and also how much control and regulation the municipalities need. HB 765 is an attempt to address that particular issue relative to municipally owned water and sewer systems. Presently, these systems come under the Public Service Commission (PSC) review. What we are trying to do in HB 765 is not remove them entirely, but allow some flexibility on the part of the local governments to make minimal type increases without the PSC review. Rep. Donaldson went through the bill section by section, explaining what each section would accomplish.

REP. DONALDSON stated that we all understand the ravages of inflation and certainly it takes time and is costly because municipalities have to meet commitments. They are restrained as far as making minor improvements and are delayed, and in the final analysis because they cost more. I think the big problem with the present statute is the fact that it is very time consuming. A lot of time is spent in getting decisions and I don't think it protects the consumer that much. I would suggest to you that the same people who elected us also elected those public officials who serve on the city commissions, and I think they are in a better position to make small changes than the PSC which is a statewide organization. They probably lack staff to review these problems. There are a number of people who will testify for the against the bill, so I will let you call on them.

PROPOSERS TO HB 765

BILL VERWOLF, Finance Director for the City of Helena, said we have several individuals from Helena who I will introduce quickly, as I will be testifying and they won't take your time. Will the following stand: City Manager Robert Erickson, Commissioners Jim Nybo, Dale Johnson and Russell Ritter, who have come to express their support for this bill.

The municipal feeling is that municipal utility rates for our water and sewer systems are set by the cost of providing these services. The placing of these utilities under the PSC

has not dramatically changed those costs. Municipal utility systems are non-profit. We try to raise enough money in revenue to meet the actual costs involved. We are not interested in how big our base gets and how big our profits get. We are talking about a break-even operation. Some of the problems cities have had because of PSC regulation has to do with time. Inflationary pressures and replacement of equipment come up fairly rapidly and create a problem that has to be dealt with on a timely manner. The process of going to the PSC and going through their entire process for a rate increase creates a delay and in some cases has created deficit problems for the utilities. There are a lot of communities in Montana that have deficit problems. Public Service Commission rules have been determined by their process that they cannot fund that, so once you arrive at a deficit that is not allowed to be part of the process of setting the rates.

We feel the locally elected officials who are representing the people served by that utility by a direct vote should be able to make the changes necessary for a normal operation. If we get into a situation where there is a major improvement needed or something that is just an improvement to the system, that would have to go to the PSC and be subject to the same review it has today. The other section in HB 765, as far as allowing the local government the ability to raise rates, has to do with mandated costs. For example, this would mean if EPA and the state department felt the environmental service comes in and says "you have to build a plant and meet certain requirements of turbidity," that the cost of building that plant and paying off the bond issue would be passed through into the rate structure of the community through this process rather than through the PSC. However, if the community wanted to build a plant for their own reasons or approve the system, that would have to go through the PSC.

We feel that this bill provides a balance between complete removal of the PSC and allowing some flexibility to the local government. Mr. Verwolf closed his testimony by affirming that this bill provides reasonable flexibility without allowing the cities the ability to go for radical programs to keep the PSC control on, but allows us to cope with inflation and cope with mandated building projects without having to go to the PSC to get approval of those rates. Primarily it eliminates the problem of generating deficits while you are trying to go through the process of raising the rates.

CHAIRMAN BERTELSEN reminded everybody to sign the witness sheet. He also reminded them that we have eight bills to hear before 10:30 tonight, so we are on a real time crunch. If you have information which repeats what has been said, I would rather you hand in your statement, unless you have new information to present.

CALVIN CALTON, Utilities Attorney for the city of Billings, said he is speaking on behalf of the city of Billings. Mr. Calton presented a statement from the city of Billings in support of the bills eliminating PSC jurisdiction over municipal utilities which include this bill, HB 765, and HB 771, which we are hearing later today. He read the letter to the committee. (Mr. Calton's testimony is attached to and made a part of these minutes.)

RUSS RITTER said he is an elected official of the city of Helena, and in view of time constraints, he'd like to say that he supports specifically the testimony of our City Finance Director, Mr. Verwolf.

CURTIS MCKENZIE said he is the City Engineer of Laurel, Montana. They support the statements made by the other petitioners and we support HB 765 and HB 771. He introduced the Mayor of Laurel, Larry Herman; Ken Bevin, a member of the Utility Committee and Dick Metzger, who is the maintenance director for the city of Laurel. We do wish to point out that it is very hard to get a rate increase even though we've gone through this nine month period and sometimes longer. Our city has a water tank which has needed maintenance for five years and we cannot get the funds to maintain it. If we can't get the raises to maintain it, one of these days we may have a failure. We have water lines and pipes which have been installed for 60 years and subject to electrolysis. It is very difficult under the guidance of the PSC to keep up with our system. Laurel has grown about twice in population in the last 15 years, yet we have half as many people maintaining the water system today as we had 15 years ago.

LARRY HERMAN, the mayor of Laurel, said generally they support both bills. A fundamental issue before the committee is the PSC's roll in regulation of municipal utilities. The present involvement of the PSC restricts the ability of cities to respond to the needs of its residents, and this results from the PSC's attempt to rigidly control local government powers.

The PSC does not have what might be called a city or urban policy which is responsive to the needs of the community. From a local view, many points can be made for local regulation of city utilities. A local government is responsive to the needs of its residents and is the best judge of the needs of the city. If they are not, they will not be returned to office.

The cost of providing utilities to the city's residents can be reduced. The city must spend unnecessary monies for every hearing before the PSC to meet purely bureaucratic rules and regulations without any relevance to the real needs of the city. As an example, the city of Laurel must spend between

\$10,000 and \$15,000 for each hearing before the PSC.

The PSC's continuance in regulation of city utilities results in increasing the bureaucracy to regulate this utility. Already the PSC is asking for more staff, more money to work with, and who will bear the cost but the state, the cities and the consumers. Increase in the cost of local utilities due to the bureaucratic paper work and studies is again passed on to the public. The present bills before the committee do provide protection to the public in two ways. First, consumer council remains as a watchdog for the consumer and, second, the courts have authority to review all methods. If the public officials are not responsive, they will not be returned to office. The present bills before this committee will return the regulation of local utilities where they belong, to the people affected. We urge your strong support of these two bills.

WADE WEAKLEY, utility manager for the city of Great Falls, said he won't reiterate any of the things which have already been said. The city of Great Falls concurs with most of the statements already proposed. One thing I do want to bring up is the cost of PSC regulation to the consumers of Great Falls. It is reaching staggering proportions. We are now talking of a Master Plan rate study, and legal fees, just for the water, range to about \$108,500. Of that, approximately \$25,000 to \$30,000 is allocated toward legal preparation of the presentation of the case to the PSC. In addition to this, sanitary sewer regulation fees would also be in the same neighborhood of \$25,000. We want to go on record as supporting the bills.

JOHN FLODEN, the public works director for Great Falls, said he is also here at the request of Tom Flynn, who is the consultant doing the rate studies for Kalispell and Whitefish right now. We support both of these bills, preferably the one to be discussed this evening.

DAVE GOSS said he is representing the Billings Chamber of Commerce. He said they want to testify today as a group in favor of both bills being heard today.

SAM GESKO said he is representing the city of Bozeman. We have not had a water increase in 23 years. We have been preparing a presentation to the PSC for two years and I hate to mention what the cost is. I can assure you it will not be another 23 years before request of our second rate increase, and I hope in subsequent requests we won't have to be saddled with the time and costs involved in this one. We endorse both of these bills, preferably the one to be heard this evening, HB 771, but as a second resort, this one.

ALEC HANSEN said he is representing the Montana League of Cities and Towns. This evening you'll hear testimony on HB 771, which would totally remove the municipal utility regulation of the PSC. Although the League of Cities and Towns prefers HB 771, we do support Rep. Donaldson's bill as an acceptable alternative.

Other proponents signed the visitor's register.

OPPONENTS TO HOUSE BILL 765

JIM PAINE, Consumer Counsel for the state of Montana, said he is appearing in opposition to HB 765 on one ground only, and that is the significant adverse fiscal impact on his office. We do not take a position in regard to substantive merits of this bill. We're letting the committee do that. We are not commenting on substantive merits, but I'll be happy to answer any questions, however, in regard as to what this would cost my office, which is composed of four people, myself, an attorney, a rate analyst and a clerical position. I don't think we can do it under our current situation. There are over 105 cases on the priority list which are waste water projects from the Department of Health. There are over 25 major water works on their priority. There are a number of communities in this state that are going to have extensions, additions which would result in increased rates to the community. I can't keep track of every city commission meeting that is going to take into consideration a rate increase or discuss a capital improvement and represent the consumers. I am not equipped to do this under the current situation. There isn't sufficient time under the framework of this particular bill to allow my office to handle the problems.

BILL OPTIZ said he doesn't want to be classified as an opponent. The Commission's position on this bill is neutral. I do want to point out in reporting on section 4, that the information contained in the report, in the event of an appeal to the Commission, would be insufficient in my opinion to have the Commission make a decision. If the reporting requirements presently on the utilities remain the same, in the event there is a problem of a municipality having it appealed to the Commission, we would have the data base on hand to get going. I'm afraid that if they only kept this information and there was opposition to their increase, the Commission would have insufficient data to present it to make a decision.

JIM JENSON said he is representing the Low Income Senior Citizen's Advocate. They oppose this bill for one particular reason and that is the pragmatic result of the Consumer Council's office being understaffed. We will have to retain lawyers and rate attorneys to deal with complaints of the low income group because we don't feel they will be properly represented. We are quite concerned about eliminating the protection of the Consumer Counsel. This complaint is addressed to HB 765 only. There will be even more concern when House Bill 771 is addressed

tonight. I am concerned that we are almost always in favor of decentralizing local control not only in senior citizen matters, but in this particular case there is a real financial impact on individuals when they are intimidated to go before local governing bodies when they are opposed by lawyers. They hope to be able to rely on some expertise from the Consumer Counsel.

REP. DONALDSON was asked to close. First of all, Mr. Paine has indicated that his staff is probably inadequate. I am sure if they have to review every one of the cases, he is probably correct. But I would like to refer you to page 2, lines 18 to 24, where we state we don't expect them to be involved in everyone's project. It allows them to have the opportunity if the need arises. I am not familiar with the PSC reports, but I would suggest this is not a particular problem if the PSC were to request additional information, if needed. It would be better to request it than have it gathered unnecessarily. As far as the senior citizens, I recognize their problem, and I think we are in a very desperate situation at this point. I am fearful that they are going to be poorly represented when they pay their utility bills unless we start doing something about this problem. We must do something very soon because we are talking about basic utilities and basic services cities have to provide. I hope you will give this bill very serious consideration.

QUESTIONS FROM COMMITTEE MEMBERS

REP. AZZARA asked Mr. Paine why he thinks this bill would place enormous review obligations on him, because sections 4 and 5 seem to restrict it to those areas where it would be beyond a certain rate of increase. Section 4 suggests that only the copies of the intention of the local level reports be made available to you.

MR. PAINE said in order to do a reasonable job for the consumers of the particular municipality, you have to keep track of what capital improvements are going to be installed and the cost of same. That means keeping up to date with the engineers that do consult with the city, which means participating in city commission meetings. The time scenario here would indicate to me that if you do not do that, then the city will give notice at least 28 days prior to a hearing on a matter. If we did not gear up to know what a particular city was doing, whether it was justified or not prior to that time, we'd be real pressed for time in order to try to draw a meaningful conclusion as to whether or not it was justified.

REP. AZZARA said the point is that you are not obligated to do that under this bill. The municipality is obligated to make certain information available to you. I think a reason-

able case could be made then. If problems result from the lack of your attention to each individual situation, it has to be taken up at that time. But I don't see the need for the argument to review everything the municipality does with the depth and detail you are suggesting.

REP. AZZARA asked Jim Jensen how the consumer might be protected. Do you have any idea on this?

JIM JENSEN said it would be limited to less than 15% possibly in this bill. We find 15% not necessarily to be a minimal amount of increase annually in either sewer or water increases. In terms of representation, I don't know who at the local level would be sufficiently well versed in the utilities language and rates to stand before a regulatory body involved at the local level to make an active presentation to refute the very technical efforts presented by utility lawyers.

REP. AZZARA said we are not talking about utility lawyers. We do have municipal attorneys.

JIM JENSEN said we have had utility attorneys representing utilities.

REP. KITSELMAN asked Bill Opitz: When you gather facts for a rate increase, you held hearings and the people came up and gave you the input, didn't they? Or was their preparation by attorneys from both sides?

BILL OPITZ said he wasn't at the hearing, but he knew Jim Paine represented the consumer Counsel. We had our attorney and beyond the city having their attorney, I don't know of any others.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on HB 765. We'll clear the room and allow witnesses for HB 760.

HOUSE BILL 760 - sponsored by Rep. Steve Waldron

REP. WALDRON said on the way down here, he had a good feeling because this is probably the first bill he's introduced that hasn't been controversial. When I got here I found out that the sheriffs were going to come in against the bill and they told me the reasons why. The bill was requested by the Billings Chamber of Commerce, and since Missoula didn't endorse me, I thought I could help out the Billings Chamber.

The bill deals with consolidation of services between local governments, city and county. Under current law there is

VISITORS' REGISTER

HOUSE

Local Govt

COMMITTEE

BILL

HB 765

Date

2-19-81

SPONSOR

Rep. Gene Donaldson

NAME	RESIDENCE	REPRESENTING	SUPPORT
T. A. Goss	Billings	Billings Chamber of Commerce	765
Art McKenzie	Laurel	City of	765
	Laurel	City of Laurel	765
Robert A. Peltier	Billings	Billings, City of	765
Robert D. Underwood	Billings	Billings, City of	765
James W. Humber	Star Rt. Bismarck		
Wade Wencley	Great Falls	City of Great Falls	765
Jan Dolan	Great Falls	"	765
Robert Metzger	Laurel Mt	City of Laurel	765
Sam Buser	Laurel Mt	City of Laurel	765
John R. FLODEN	Columbia Falls MT.	City of Col. Falls	765
Frank M. Dalton	Great Falls, MT	City of Great Falls	765
W. Verinoff	Helena	City of Helena	765
James Nybo	Helena	"	"
Harry Kilzer	"	League of Cities	765
Jim Wozniak	Helena	ND 20	765
James P. Pann	Helena	Montana Council	
W. A. Pann	Laurel	W. A. Pann	
Jim Jensen	Helena	LISCA	
SAM GESKO	BOZEMAN	CITY OF BOZEMAN	765
Alc. Hansen	Helena	LEAGUE OF CITIES	765
Al Hansen	Billings	City of Billings	765

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

from Calvin Carlton

CITY OF BILLINGS PUBLIC UTILITIES DEPARTMENT



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Public Utilities Director
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Statement of City of Billings in Support of Bills Eliminating PSC Jurisdiction over Municipal Utilities (H.B. 765, H.B. 771)

The City of Billings supports these bills, with preference given to H.B. 771.

A very brief and concise statement of the reasons for our support is as follows:

A. Policy Considerations

1. Past Montana Legislatures have acknowledged the need and desirability of increased municipal powers to control their own destinies in passage of "Home Rule" legislation. The voters of the city of Billings approved the "Home Rule" concept in adopting Billings' City Charter form of government.
2. 45 out of 50 states do not allow their PSC's to regulate municipal utilities.
 - a. Until 1979 sewer utilities were not regulated by the PSC in Montana. A Supreme Court decision changed this. Consumers were not adversely affected by the nonregulation so far as we are aware.
 - b. Most states find it desirable to allow municipalities to regulate their own utilities.
 - c. Duplicative regulation and the attendant cost would be eliminated if PSC review is limited.
 - d. All consumers, whether residing inside or outside the cities, have protection from unreasonable rates through the Montana Consumer Counsel, who has the expertise necessary to address unreasonable or inequitable rates. Such consumers

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WATER IS PRECIOUS!

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would also have the right to have the courts review rates, with or without the Consumer Counsel's assistance.

- e. Generally cities and towns are capable of setting their own rates equitably, but in any event, expert rate consultants are available to small as well as large municipalities. The involvement of EPA in sewer systems mandates the use of such consultants. The municipal utilities are non-profit operations.

3. Multiple levels of regulatory review are avoided.

- a. Now new sewer rates must be reviewed by:

- (1) City Council
- (2) Department of Health and Environmental Sciences (State)
- (3) Environmental Protection Agency, EPA (Federal)
- (4) Public Service Commission (State)
- (5) Consumer Counsel (State)

By any common sense definition this must be an excellent example of over regulation, even "overkill".

4. PSC's proposed water service rules, upon which a hearing was held on February 18th, would---

- a. Do away with Special Improvement Districts as a financing mechanism for water utility expansion. The legislature has long granted this right to cities in Montana. The PSC proposed rules would essentially require "free extensions"- a boon to developers, a new burden to existing rate payers.
- b. Require free extensions to be paid for by the water utility. This means, to be paid for by customers. Developers would not have to pay the cost of their own extensions. If a developer applied for an extension and the city water utility built facilities at its rate payers expense and the development never went forward, the funds would be tied up to no one's benefit and to all customers higher rates.
- c. Prohibit re-sale of water. Billings has numerous water haulers which could not then purvey city water to country homeowners.

5. City councils have to live with the day-to-day results of its management decisions. The PSC does not; yet the PSC's decisions on rates and regulations affect management more substantially than practically any other decision. Cities should be left free to adopt their own regulations to meet their unique requirements.

B. Economic Considerations

1. In its rate order on Billings 1977 water rate application, the PSC held:

A municipal water utility cannot recover past deficits nor project rates to allow for inflation.

If you were so prohibited in your business, what would you do?

2. The PSC budget will have to be increased substantially if it is to have adequate staff to examine and hear all Montana municipal water and sewer requests in the future. The city of Billings must now contemplate new applications on water every two (2) years. Sewer can be expected to fall in the same pattern.
3. Non-profit municipal utilities in Montana are in grave financial trouble. The basic problem is PSC regulation. This is compounded by the current inflationary spiral. It is now a "gray" area in Montana law as to whether it is the PSC or the municipality which is to manage the utility. If you really intend that the PSC manage the municipal non-profit utilities, then pass laws so doing. Then fully fund the PSC so they can do the job well. Don't leave it the way it is now.

In the past the legislatures have given cities excellent legislation with which to govern their utility growth and operation, such as The Municipal Revenue Bond Act. However, the PSC refuses to acknowledge the clear language of this Act as well as other laws. In view of the PSC's political intransigence, the only recourse available is to eliminate PSC interference entirely. PSC regulation is unneeded, unwanted, uneconomic, unefficient, and unnecessary.

The nine month regulatory lag cannot be tolerated. The costs of this unnecessary regulation are proliferating boundlessly.

4. The cities' bonding capabilities are being adversely affected. The PSC does not understand bond coverage considerations. The City of Billings, partly because of the high interest rates, is currently still trying to issue \$3.5 million in revenue bonds, for which approval by the PSC was first sought in its 1977 water rate application. Construction costs continue to escalate incredibly in the interim.
5. The PSC would be much better off, as would Montana consumers, if the PSC were to devote its limited resources to regulate private, for profit, utilities who are not subject to voter concurrence in their rate policies.

Respectfully submitted,

The City of Billings

NAME Long, Thomas BILL No. 765
ADDRESS Box 315, Laurel, MT 59011 DATE _____
WHOM DO YOU REPRESENT City of Laurel
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*The City of Laurel supports AB No. 765 and
also AB No. 771. Preference being toward AB No. 77*

STANDING COMMITTEE REPORT

February 21, 19.

MR. SPENCER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 76

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MUNICIPAL REGULATION OF MUNICIPALLY OWNED UTILITIES; TO ESTABLISH MAXIMUM INCREASES ALLOWED; TO REQUIRE REPORTING TO THE PUBLIC SERVICE COMMISSION AND THE MONTANA CONSUMER COUNCIL; AND AMENDING SECTION 69-3-101, MCA."

Respectfully report as follows: That HOUSE Bill No. 76

DO PASS

HOUSE BILL 765:

CHAIRMAN BERTELSEN said this bill is also in reference to the PSC.

REP. KESSLER moved that HB 765 DO PASS. He feels this is a compromise bill as there is definitely a problem with HB 771.

REP. PISTORIA said he'd like to see this bill not involve first class cities.

QUESTION on HB 765: A roll call vote was taken and the result was 15 to 2 for DO PASS. Those voting "no" were Reps. McBride, and Pistoria. HOUSE BILL 765 received a DO PASS recommendation.

HOUSE BILL 790 - sponsored by Rep. Daily.

STAFF RESEARCHER LEE HEIMAN explained the amendments to HB 790. He stated we have a problem. If we vote in the metropolitan sewer bill and put it under the PSC, or pass HB 765 for a 15% PSC increase control, my suggestion would be to put a coordinating clause in the Butte metropolitan sewer district PSC bill that if HB 765 passes, then those portions of HB 765 which would prevent Butte's local control should be kept in. The new parts that give it to the Public Service Commission should be struck. The bill would return to much the way it is now. The parts which show \$7 a year would be struck.

REP. MCBRIDE wondered if passing the other bill, which changed the actual date, and now passing another bill effecting that same section with an immediate effective date, would cause any problem in modifying the same law.

MR. HEIMAN said he talked with Rep. Daily and others on that, and the Senate would put in a coordinating clause on the rate increase bill so that if this bill passes the increase would be effective only until this bill becomes effective. The coordinating clause would be taken care of in the Senate.

REP. HANNAH moved that the amendments to HB 790 DO PASS.

CHAIRMAN BERTELSEN: All in favor of the amendments signify by saying "aye." All voted in favor, and the motion on the amendments carried by unanimous vote.

REP. MCBRIDE moved that HB 790 DO PASS AS AMENDED.

QUESTION: The chairman said all in favor of HB 790 as amended say "aye." Motion carried by unanimous vote and HB 790 received a DO PASS recommendation.

Representative Daily and Senator Stimatz said they would do that and get back to the committee.

CONSIDERATION OF HOUSE BILL 765:

AN ACT TO PROVIDE FOR MUNICIPAL REGULATION
OF MUNICIPALLY OWNED UTILITIES; TO ESTABLISH
MAXIMUM INCREASES ALLOWED; TO REQUIRE
REPORTING TO THE PUBLIC SERVICE COMMISSION
AND THE MONTANA CONSUMER COUNSEL.

Representative Donaldson, District No. 29, said this bill gives greater latitude to local governments to set their own utility rates. Section 1 outlines the roll of the act. Lines 17 through 19 on page 1 provide that the municipality can raise rates if the increase is not more than 15% per year. The committee will hear testimony that if this passes, rates will go out of sight. The Public Service Commission (PSC) cannot control inflation and someone has to pay the bill. Section 2 requires adequate notice of rate hearings. Notices shall be mailed to the Consumer Counsel. Section 3 deals with the conduct of municipal rate hearings. Section 4 provides for an annual report to the PSC. There is an amendment to make certain the reports are in line with what the PSC needs and wants. Section 5 provides that a rate increase of more than 15% must go before the PSC. Section 6 is the rules for operation of municipal utilities. Section 7 is old language. The major thrust of the bill is in Section 1. He suggested some amendments to clean up the language and make more apparent what they are trying to do. (See attached Exhibit B.)

Representative Snontz, District No. 53, supports the bill. Montana is the only state this occurs in. Rates should be set by the city government. If you don't trust people in city hall, vote them out of office. It is very expensive for small communities to apply to the PSC for rate increases. The cost to raise rates is more than the amount generated by the increase. This bill is a reasonable compromise with what we have now. You can control water and sewer rates better when they are set by the city council rather than the PSC.

Senator Regan, District No. 31, said if cities were to abuse their privilege of handling their own affairs, there are recourses. The PSC can step in or we can take it back to the legislature to put it back in the PSC's hands. Local control is best.

Senator Elliott, District No. 8 and former mayor of Columbia Falls, said he had recently become involved in the rate making process for water and sewer rates in Columbia Falls. They needed an increase in 1979. It was a sizeable increase and the PSC is not geared to act in a quick manner. They started the proceedings

in February of 1980 and did not receive any action until November. The action kept getting deferred. The increase was outdated by the time they got it so they had to start all over again. He concurs that the Consumer Counsel should act as representative and be made aware of what is happening.

Russ Ritter, city commissioner from Helena, said all they are asking for is that they be given the right to make the final decision. It seems that the local elected officials could adequately address any problems in the funding of this.

James Nybo, Helena city commissioner, asked if we wanted to untie the hands of elected officials to do what they were elected to do. It is proper that we do that. The people setting the rates would be elected by those people who are water and sewer users. This would free up the PSC. Local officials can make important financial restrictions. Hearings are standard procedure for local governments, charters require public hearings before rates are raised. The amendments would be acceptable to the city of Helena. (See attached testimony sheet.)

Norbert Donahue, city of Kalispell, said they would like to break even if possible. Our citizens are the stockholders, they do not like to be under the PSC. The cost is about \$10,000 to prepare a petition to the PSC for a rate increase. By the time a rate is granted it is too late and they are in the hole again. They have other things to do in the city other than running utilities; the time they could spend on sewer and water rates would be adjunct to the other things they do.

Gene Thayer, mayor of Great Falls, believes the locally elected officials are qualified for this. Forty-five states have locally controlled rates. The Great Falls city commission resents the insinuation that the PSC is the only body qualified to protect the consumers.

Larry Herman, mayor of Laurel, spoke in support of the bill. (See attached Exhibit C.)

T. Curtis McKenzie, city engineer in Laurel, said they have run \$21,000 in the hole in the operation of their water system. They have a 4 million gallon water tank that has needed repair for 5 years but they do not have the funds to repair it. They had between 4 and 6 men in the department 15 years ago for repairs but now only have 2 and the city has doubled in size. The PSC would probably be glad to see them taken out from under them because they take up so much of their time.

Wade Weakley, utilities manager for the city of Great Falls, said

they have a rate application before the PSC. The costs itemized by the mayor are already \$66,000. The cities have to bear this. The customers are the ultimate beneficiaries of these costs. If this is placed at the local level costs will be decreased. The cost to the city of Great Falls will be significant - a 30% increase for mainline replacement.

John Wilson, mayor of Deer Lodge, supports the bill. The town has a population of over 4,000. They are really hurting when it comes to water and sewer rates.

Walt Valacich, city of Great Falls, said they have problems with the water situation; the biggest one is the stance people are taking relating to rates. He thinks they have the ability at the local level to set the rates.

Tim Berry, consulting engineer for the firm of Morrison-Maierle, said they are involved with many communities. It is tedious work for the consultants. Helena has a problem with the sewer system, they have no existing sewer system charge. This bill does not clearly address what happens to communities that don't have a rate at the present time. He does not know if this bill will allow them to establish operation and maintenance costs, he suggests the bill be amended if it does not.

Michael Kennedy, Billings City Council, concurs with the comments of the proponents.

Curtis Kuehn, city of Columbus, concurs with the points made and urges the bill's passage.

Hugh Spall, city commissioner from Great Falls, said they are facing a demand by the Environmental Protection Agency that the city empty its waste waters into the Missouri River in a purer form than they took it out. They feel they are diligent enough to handle this. They set rates for almost everything else in the city, why not this. The city should be able to operate more as a private business.

Rose Leavitt, League of Women Voters, concurs with the idea of more local control.

Calvin Calton, city of Billings, spoke in support of the bill.
(See attached Exhibit D.)

Gerald Underwood, utilities director for Billings Public Utilities Board, spoke in support of the bill. (See attached Exhibit E.)

Harold Eagle, president of Consulting Engineers Council of Montana, is involved in water improvement projects. He said the

cities that need water improvements are always facing raises in rates. A lot of communities have gone 20, 30 or 40 years between rate increases because they didn't want to go through the process. It is much easier to have a number of small water rate increases. He does not think any of the remarks made today were in criticism of the staff of the PSC. He has always been impressed with them. They inherit more work than they can effectively deal with. Any legislation that will permit us to take care of financing problems in a more efficient manner is in the best interest of all of us.

Harry Simons, Shelby mayor, supports the bill. He concurs with everything said. It took 5 years to get approval to improve their water system.

Senator Blaylock, District No. 35, supports the bill.

George Christensen, mayor of Boulder, supports the bill.

Bill Fox, mayor of Billings, is the only elected official that isn't a real firm believer of total local control but this is one case where there is no doubt about it. The current system does not fit the times. They can do it better and cheaper at the local level.

Walt Reisig, city councilman from Billings, said they have spent \$90,000 over the last 3 years appearing before the PSC for rate increases.

Bob Erickson, city manager of Helena, spoke briefly in support of the bill.

Senator Goodover, District No. 22, said in the last election we saw people ask for a new direction. Local people need greater control. City officials are elected to perform for local communities to serve their needs as they know best. If people don't like the officials, they can vote them out.

Senator McCallum then called for opponents of the bill.

Representative Pistoria, District No. 39, spoke in opposition of the bill. (See attached Exhibit F.) He submitted a petition from property owners in Great Falls who oppose passage of this bill. (See attached Exhibit G.) If there is no opposition to a raise in water and sewer rates, the PSC grants the increase right away. A hearing to the Consumer Counsel would cost as much as a hearing to the PSC.

Senator Hager, District No. 30, said there is a problem with residents outside of the city buying water from utility services owned by the city. Whenever the city sells water it is engaged in

a business function rather than a city function. If the bill is adopted, every family purchasing water from the city would be at the city's mercy since they could not complain to the PSC because of unreasonable rates or charges. The cities would enjoy a monopoly because the people could not get their water from any other source. People outside the city limits who purchase water from the city would not have the right to protest. He gave the committee a letter from Sonny Lockrem. (See Exhibit H.)

Lloyd McCormick, Joint Council #2, Teamsters in Great Falls, said the consumer has to pay the high cost to go into hearings at the city level also. If this bill is passed, the other utility companies will come to the legislature wanting the same thing.

John Allen, Montana Consumer Counsel, spoke in opposition of the bill. (See attached Exhibit I.)

Richard Ferderer, secretary/treasurer, Local #45 in Great Falls, spoke briefly in opposition of the bill.

John Manzer, manager for Teamsters Local #45, Great Falls, said it would be taking away his rights to be represented by the PSC if this were put in the hands of the commissioners in Great Falls. The PSC has great expertise in rate making. They are there for the protection of all citizens. Taking their power away is doing an injustice to people in the communities.

Representative Donaldson, in closing, said he is not criticizing the PSC, they have been very helpful. People are fed up with over-regulation and this is a serious case of it. He believes this does cover Mr. Berry's problem. Cities that do not have a rate currently would not be helped by this bill, they would probably have to go to the PSC to establish a rate. There are 45 states that do not go through this process, they must not be having too many problems. The 15% is not mandatory, they can take 3% if that is all they need. This bill does not require the Consumer Counsel to become involved, it allows them to be if they want to. He is upset with the stand they have taken on this bill. He hopes the committee will concur with the bill.

Senator McCallum then called for questions from the committee.

Senator Conover asked if the water that is sold to Billings Heights is regulated by the PSC.

Mr. Calton said yes, with the approval of the PSC.

Senator Conover asked Senator Hager if the water rates in his area had ever been increased.

Senator Hager answered he was sure they had been.

Senator Conover asked if he had to go to the PSC before this.

Senator Hager was not able to answer that question.

Mr. Underwood replied that when the city of Billings raises rates, it has to go to the PSC. There have been 3 rate increases since 1964.

Senator Goodover said during this session the legislature has taken the limit off bond interest for SID's. They put a sunset on it so in 2 years the bill comes up for review. The legislature took usury limits off banks and trades. They put suspensions on those so in 2 years the law is suspended and it goes back to the old law unless the legislature extends that. The legislature has been allowing every segment to do their own thing for the next couple of years, that is what you would be doing with this bill.

Senator O'Hara asked how this would effect the people in Black Eagle and how do their present rate charges compare to the city's.

Mr. Valacich answered that Black Eagle has been more than glad to get the service and do not pay any more than anyone else. People in Black Eagle would not oppose a rate increase.

Senator Ochsner asked what the cost for water is for an average household in Billings.

Mr. Underwood replied that it is \$5.50 per month.

Mr. Wilson said Deer Lodge is over \$2 per month.

Senator Thomas asked what it was in Great Falls.

Mr. Valacich answered \$8.90 for water and sewer.

Senator Conover asked what it was in Missoula.

No one knew for sure.

Senator Ochsner asked if this included Missoula since they have a private water system.

Senator Van Valkenburg said he does not think it would include Missoula, only municipally owned water systems.

Alec Hanson, League of Cities and Towns, said only municipally owned systems are included.

Senator Thomas asked when you have a \$90,000 cost for a rate increase, what percentage is incorporated in what is received from the PSC.

Mr. Underwood said he did not know.

Senator Thomas asked if it would be 5% or did he have any idea.

Mr. Underwood said with a \$100,000 figure it would be about 10%.

Senator Thomas asked if that was universal.

Tom Schneider of the PSC said Billings has asked for 2 rate increases: \$1.6 million and later \$1.2 million. They were granted \$1.3 million and over \$900,000.

Senator Van Valkenburg asked Mr. Allen if he was appearing before the PSC with respect to water and sewer rate increases.

Mr. Allen answered yes.

Senator Van Valkenburg asked why they would have no discovery power under this bill but do under existing law.

Mr. Allen said currently you appear before district courts and the PSC and have discovery powers. Cities are required to make certain filings to the PSC. They can rely on that filing and need little discovery beyond that.

Senator Van Valkenburg asked if there were examples where cities have applied for less than a 15% increase where they appear on behalf of consumers to object to an increase.

Mr. Allen thought so.

Senator Thomas asked Mr. Schneider what the average time was for granting increases.

Mr. Schneider said he never worked out an average. They do have a 9-month law. Where there is a federal mandate or immediate problem, they are, by enlarge, granted rapidly.

Senator Thomas asked Representative Donaldson if the rates can be higher for persons outside the city as opposed to people inside the city.

Representative Donaldson replied no, not in this statute.

Senator Thomas asked if he would consider providing an amendment to provide for that.

Representative Donaldson said he could consider it.

Senator McCallum asked Representative Donaldson if the hearing must be held in 31 days.

Representative Donaldson said that was correct, it is typical with most postings.

Senator McCallum said on page 2 it says notice shall be mailed to the Montana Consumer Counsel. Unless we change that the Counsel will not have anything to say about it.

Representative Donaldson said they would have the right to appear or be requested to appear.

Senator McCallum said on page 3, line 3, it says 30 days after the hearing they shall issue a decision. The decision is final 10 days after filing with the municipal clerk. There is no right of appeal.

Representative Donaldson said it is implied in the amendments suggested.

Senator McCallum asked if the city has expertise in this area or would they have to hire experts.

Representative Donaldson said they are trying to hold down costs. The cities run a lot of other enterprises than water and sewer rates. This is not a terribly complicated area.

Senator McCallum asked if you could have a 30% increase, 15% for sewage and 15% for water.

Representative Donaldson said the cost increase would be the same.

Senator McCallum asked how many dollars would the 15% amount to in Billings.

Mr. Underwood said he is not sure what the increase in net revenue would be. The water bill itself would go up 15%.

Senator Thomas asked what the gross revenue was in the Billings Water Department.

Mr. Underwood said slightly over \$3 million.

Senator Ochsner asked if they received a 15% increase and needed more and had to go to the PSC, would the PSC have record of the 15% they already received so they could take that into consideration.

Representative Donaldson said on page 3, Section 4, they must make an annual report to the PSC.

Senator Thomas asked if there was a change as far as the schedule for large users, who would set that rate.

Local Government Committee

March 21, 1981

Page 11

Representative Donaldson said he was not certain.

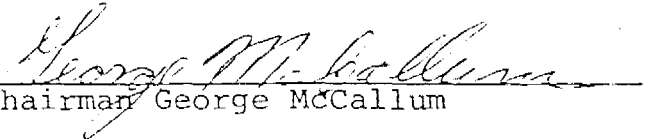
Senator Thomas said on page 3, Section 4 it mentions the classification and rate, who makes those determinations.

Representative Donaldson answered they make the determinations with the city council if not more than 15%, more than 15% would go to the PSC.

Senator Thomas asked Mr. Allen the same question.

Mr. Allen said the increase could not total more than 15%.

There being no further business before the committee, the hearing was adjourned at 3:00.


Chairman George McCallum

gs

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/21/81

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

DATE

MARCH 21, 1981

COMMITTEE ON

LOCAL GOVERNMENT

BILL NO.

HB765

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
W. Donahue	City of Kalispell	X	
James H. Nybo	City of Helena	X	
John D. Wilson	City of Deer Lodge	X	
Joy E. Mignon	City of Deer Lodge	X	
Bill Kerns	City of Helena	X	
Miss R. R. R. R.	City of Helena	X	
W. D. R. R.	City of Helena	X	
Gene Leavitt	LWV Int (interest)	X	
KENNIS TAYLOR	City of Helena	X	
Larry Herman	City of Laurel	X	
Gene Taylor	City of St. Falls	X	
High Sgt. "	" " "	X	
Bill Sw	City of Billings	X	
T. Curtis McKenzie	City of Laurel	X	
Nate Valovich	" " "	X	
Artie C. R. R.	Town of Columbus	X	
Paul Reising	BILLINGS- LEAGUE PRES.	X	
Wade Winkley	City of Great Falls	X	
Pat Reagan	Senate District 31	X	
Paul H. F. R. R.	Representative of 39		1
W. D. R. R.	W. D. R. R.	X	
Kimothy R. B. R.	City of East Helena	X	
Michael Kennedy	City of Billings		
Calvin D. Cath	City of Billings	X	
Ronald D. R. R.	City of Billings	X	
W. D. R. R.	W. D. R. R.		

(Please leave prepared statement with Secretary)

NAME: John Shontz DATE: 3-21-81
ADDRESS: Rt 1 Box 129A Sidney, MS 39270
PHONE: 442-0389

REPRESENTING WHOM? House District 53

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____
- only Western State regulating municipal-owned
water - sewer rates
- municipalities pay the freight - not true
residents and taxpayers ~~pay~~ pay the costs
- local governments - we can't allow them to
function and set rates - we don't trust them -
if we don't like what our city council
is doing we can vote them out of
office

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ADDRESS: Helen

REPRESENTING WHOM? C. J. Hester

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

James H. Nybo

DATE:

Mar 21, 1981

ADDRESS:

PO Box 1050, Helena 59624

PHONE:

406/442-9873

REPRESENTING WHOM?

City of Helena

APPEARING ON WHICH PROPOSAL:

HB 165

DO YOU:

SUPPORT? ☒

AMEND? ☐

OPPOSE? ☐

COMMENTS:

Basic philosophical question: do we entrust the hands of our local elected officials for the management of the utility, or do we make a private utility? The latter has the advantage of being for use and abuse - deficits - ref by 'sen. effort'.

The Senate Bill will have a lot of the votes - The local elected officials - are all elected by the water and sewer users. They do not have non-resident stockholders covered all with it.

* Passage of HB 165 would give up the Public Service Commission for issues - true statewide importance - electricity and gas rates, Telephone service, and Transportation.

* Important financial decisions are now being sent to local officials. We would set sanitation rates; various license fees; salaries, wages, and contract terms with employees and their unions; and property tax mill levies.

* Hearings - as required in HB 165 are a standard procedure in Helena. Our charter requires a public hearing before any law is revised. We have an excellent facility for hearings - accessible to all - and members of the public have shown no reluctance to appear before us to tell us what they think.

* Amendments - constructive input by a PSC Attorney.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

look ok
willing to
work w/
committee

NAME: Gine Thayer

DATE: 3/21/81

ADDRESS: 2612 4th Ave South

PHONE: 761-1545

REPRESENTING WHOM? City of West Falls

APPEARING ON WHICH PROPOSAL: HR 765

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Herman

DATE: _____

ADDRESS: Box 217 Laurel

PHONE: 628-8601

REPRESENTING WHOM? City of Lowell

APPEARING ON WHICH PROPOSAL: H B 765

DO YOU: SUPPORT?

AMEND? _____

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DAVE CUSACKLEY DATE: 3-27-81

ADDRESS: 1520 4th Ave No. Great Falls, MT 59401

PHONE: 727-5881

REPRESENTING WHOM? City of Great Falls

APPEARING ON WHICH PROPOSAL: Bill 765

DO YOU: SUPPORT? x AMEND? OPPOSE?

COMMENTS: Wish to support passage of Bill 765 allowing Cities
to set rate increases up to 15% In support, costs associated with
rate hearings ~~are~~ would be saved.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: 3-21-81

ADDRESS: 1626 1st Ave So Great Falls

PHONE: 452-5603

REPRESENTING WHOM? City of Great Falls
§ 8 715-

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: TIM BERRY DATE: 3/21/81

ADDRESS: P.O. Box 6197 HELENA

PHONE: 402-3050

REPRESENTING WHOM? MORRISON - MAFFIELE & City of East Helena

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

WHAT IS THE NET EFFECT ON THOSE COMMUNITIES
THAT NEVER HAVE HAD A CHARGE SYSTEM FOR WATER
OR SEWER? APPARENTLY THE BILL WOULD STILL
REQUIRE PSC REVIEW OF INITIAL O&M CHARGE
SYSTEM. IF THIS IS IN FACT THE CASE, IT
DOES NOT REALLY HELP THAT MUCH.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE

ADDRESS: 2013 Clark Ave Billings MT 5910

PHONE: 656-6696

REPRESENTING WHOM? City of Belknap

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Curtis C Kuehn DATE: 3-21-81

ADDRESS: P.O. Box 412 Columbus, MT. 590

PHONE: 322-5877

REPRESENTING WHOM? Town of Columbus

APPEARING ON WHICH PROPOSAL: H.B. 765

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE: _____

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE : _____

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE: 3-21-81

ADDRESS:

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Gerald D. Underwood DATE: 3/21/81

ADDRESS: 623 Custer Ave Billings, MT

PHONE: 252 7488

REPRESENTING WHOM? City of Billings, Public Utilities Board

APPEARING ON WHICH PROPOSAL: HB 765

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

- d. All consumers, whether residing inside or outside the cities, have protection from unreasonable rates through the Montana Consumer Counsel, who has the expertise necessary to address unreasonable or inequitable rates. Such consumers would also have the right to have the courts review rates, with or without the Consumer Counsel's assistance.
 - e. Generally cities and towns are capable of setting their own rates equitably, but in any event, expert rate consultants are available to small as well as large municipalities. The involvement of EPA in sewer systems mandates the use of such consultants. The municipal utilities are non-profit operations.
3. Multiple levels of regulatory reviewed are avoided.
- a. Now new sewer rates must be reviewed by:
 - 1) City Council
 - 2) Department of Health and Environmental Sciences (State)
 - 3) Environmental Protection Agency, EPA (Federal)
 - 4) Public Service Commission (State)
 - 5) Consumer Counsel (State)
- By any common sense definition this must be an excellent example of over regulation.
4. PSC's proposed water service rules, upon which a hearing was held on February 18th, would ---
- a. Do away with Special Improvement Districts as a financing mechanism for water utility expansion. The legislature has long granted this right to cities in Montana. The PSC proposed rules would essentially require "free extensions" - a boon to developers, a new burden to existing rate payers
 - b. Require free extensions to be paid for by the water utility. This means, to be paid for by customers. Developers would not have to pay the cost of their own extensions. If a developer applied for an extension and the city water utility built

PROPOSED AMENDMENTS TO HB 765

1. Title, line 8.

Following: "MCA"

Insert: "AND PROVIDING A PERIOD OF EFFECTIVENESS"

2. Page 1, lines 18 and 19.

Following: "raised"

Strike: "more than 15% per year"

Insert: "to yield more than a ~~10%~~ increase in
total annual revenues" 12%

3. Page 1, lines 21 and 22.

Following: "to"

Strike: "pay principal and interest on the bonds or loans"

Insert: "meet the requirements of bond indentures or loan
agreements"

4. Page 2, line 7.

Following: "(3)"

Insert: "(a)"

5. Page 2.

Following: line 11

Insert: "(b) The notice must also be mailed at least 7 days and
not more than 30 days prior to the hearing to persons served by
the utility. The notice shall accompany the bill for services
of that utility and must be mailed within the prescribed time
period. This notice must contain an estimate of the amount the
customer's average monthly bill will increase."

6. Page 3.

Following: line 6

Insert: "A copy of each revised rate schedule shall be filed
with the public service commission upon final decision."

7. Page 3, line 19.

Following: "increases"

Strike: "in excess of 15%"

Insert: "that yield total revenues in excess of ~~10%~~
12%"

8. Page 3, line 20.

Following: "for"

Insert: "mandated federal and state"

9. Page 3, line 21.

Following: "improvements"

Insert: "for which the increase exceeds amounts necessary to
meet the requirements of bond indentures or loan agreements
required to finance the local government's share of the mandated
improvements"

NAME: Robert Erickson, City Manager DATE: 3-21-81

ADDRESS: 316 N. Park

PHONE: 442-9920 Ext 401

REPRESENTING WHOM? City of Helena

APPEARING ON WHICH PROPOSAL: HB 765

DO YOU: ☒ SUPPORT? ☐ AMEND? ☐ OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: WALT REISIG DATE: 3-21-81

ADDRESS: 1101 20th West Billings MT

PHONE: 656-6543

REPRESENTING WHOM? CITY BILLINGS - LEAGUE OF CITY OF TOW

APPEARING ON WHICH PROPOSAL: AB 765

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: It is necessary for local Gov to have
the option of adjusting water & sewer rates.
They are closer to their problems and can
better serve their Communities respectively.
while cutting unnecessary costs.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: William B. Fox

DATE: 3-21-81

ADDRESS: 1409 Colton Blvd. Billings Mont.

PHONE: 752-2432

REPRESENTING WHOM? City of Bellin's

APPEARING ON WHICH PROPOSAL: H 765

SUPPORT?

AMEND?

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tom Schneider DATE: 3/21

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Public Service Commission - SELF

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: PSC Neutral
Self Oppose

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

CITY OF BILLINGS PUBLIC UTILITIES DEPARTMENT



GERALD D. UNDERWOOD, P.E.
Public Utilities Director

CARL H. CHRISTENSEN
Asst. Public Utilities Director

P.O. BOX 30958

2251 BELKNAP AVE.
BILLINGS, MONTANA
59111

PHONE 248-9191



Statement of City of Billings in Support of Bill Limiting PSC Jurisdiction over Municipal Utilities (H.B. 765)

The City of Billings supports H.B. 765.

A brief, concise statement of the reasons for our support is as follows:

A. Policy Considerations

1. Past Montana Legislatures have acknowledged the need and desirability of increased municipal powers to control their own destinies in passage of "Home Rule" legislation. The voters of the City of Billings approved the "Home Rule" concept in adopting Billings' City Charter form of government.
2. 45 out of 50 states do not allow their PSC's to regulate municipal utilities.
 - a. ^{file} United 1979 sewer utilities were not regulated by the PSC in Montana. A Supreme Court decision changed this. Consumers were not adversely affected by the nonregulation of sewer rates so far as we are aware, in years prior to 1979.
 - b. Most states find it desirable to allow municipalities to regulate their own utilities.
 - c. Duplicative regulation and the attendant cost would be eliminated if PSC review is limited.

REMEMBER

WATER IS PRECIOUS!

PLEASE DON'T WASTE IT!

facilities at its rate payers expense and the development never went forward, the funds would be tied up to no one's benefit and to all customers higher rates.

- c. Prohibit re-sale of water. Billings has numerous water haulers which could not then purvey city water to country homeowners.
5. City councils have to live with the day-to-day results of its management decisions. The PSC does not; yet the PSC's decisions on rates and regulations affect management more substantially than practically any other decision. Cities should be left free to adopt their own regulations to meet their unique requirements.

B. Economic Considerations

1. In its rate order on Billings 1977 water rate application, the PSC held:

A municipal water utility cannot recover past deficits nor project rates to allow for inflation.

If you were so prohibited in your business, what would you do:

2. The PSC budget will have to be increased substantially if it is to have adequate staff to examine and hear all Montana municipal water and sewer requests in the future. The City of Billings must now contemplate new applications on water every two (2) years. Sewer rate applications can be expected to fall in the same pattern.
3. Non-profit municipal utilities in Montana are in grave financial trouble. The basic problem is PSC regulation. This is compounded by the current inflationary spiral. It is now a "gray" area in Montana law as to whether it is the PSC or the municipality which is to manage the utility. If you really intend that the PSC manage the municipal non-profit utilities, then pass laws so doing. Then fully fund the PSC so they can do the job well. Don't leave it the way it is now.

In the past, the legislatures have given cities excellent legislation with which to govern their utility growth and operation, such as The Municipal Revenue Bond Act. However, the PSC

810. see insert

110. Page 4.

Following: line 10

Insert: "NEW SECTION. Section 7. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies. (2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies."

Renumber: subsequent sections

121. Page 5, line 2.

Following: "(e)"

Insert: "except as provided in [sections 1 through 6],"

1312. Page 5, line 6 through 8.

Strike: these lines in their entirety

1417. Page 5.

Following: line 8

Insert: "Section 9. Period of effectiveness. This act is effective July 1, 1981 and remains in effect until July 1, 1983."

Senator O'Hara:

Proposed amendment to House Bill 765 to address questions raised during the committee hearing about the cost of water to people outside the city limits.

10. page 4, line 10, following ~~municipal~~ boundaries.....rate in creases for comparable classifications and zones outside the municipal boundaries ~~shall~~ ^{may} not exceed those set within the ~~city~~ ^{municipal} limits under the provisions of [this act].

Insert: The rule shall provide

Alex Hungen
League of Cities

Exhibit

TESTIMONY BEFORE
SENATE LOCAL GOVERNMENT
COMMITTEE ON HB765

My name is Larry Herman, I am the Mayor of Laurel. Our support is given to HB765.

A fundamental issue before this committee is the PSC's role in regulation of municipal utilities. The present involvement of the PSC restricts the ability of cities to respond to the needs of its residents. The ability to respond to public's needs results from the PSC's attempt to rigidly control local government powers over its' municipal utilities. The PSC does not have what might be called a city or urban policy which is responsive.

From a local view, many points can be made for local regulation of city utilities.

First the local government is responsive to the needs of its residents and is able to best judge the needs of the city. If they are not the voters will not return them to office.

Second the cost of providing utilities to the city's residents can be reduced. For every hearing before the PSC a city must spend unnecessary monies to meet purely bureaucratic rules and regulations without any relevance to the real needs of the cities. As an example the City of Laurel must spend between \$10,000 to \$15,000 for each hearing before the PSC just for a rate change.

The lessening of functional bureaucracy is an issue that cuts across all levels of government, and may have in the end a profound effect on whether cities survive or go into bankruptcy. Currently on the federal level, as President Reagan indicated in a speech recently, there is a growing recognition of the need to move away from the functional bureaucracy.

The PSC's continuance in regulating of city utilities will have two results.

1. The increase of the bureaucracy to regulate municipal utilities. Already the PSC is asking for more staff to do its work. Who is to bear the cost? The State? The cities? The public?
2. The increase in the cost of local utilities due to the bureaucratic paper work and studies. The cost passed onto the public.

The present bill before the committee does provide protection to the public in two ways.

First the Consumer Council remains as a watch dog for the consumer.

Second, the courts have authority to review all matters.

Further the greatest check is the local electorate itself. If public officials are not responsive they will not be returned to office.

The present bill before the committee will return regulation of local utilities to where it belongs -- to the people affected -- the cities. We urge your strong consideration and support of the proposed bill , HB765.

Y 2Y81

CITY OF BILLINGS

PUBLIC UTILITIES DEPARTMENT



GERALD D. UNDERWOOD, P.E.
Public Utilities Director
CARL H. CHRISTENSEN
Asst. Public Utilities Director

P.O. BOX 30958

PHONE 245-8989

2251 BELKNAP AVE.
BILLINGS, MONTANA
59111



City of Billings Statement re. County Water District of Billings Heights

The City of Billings anticipates opposition to H.B. 765 from the County Water District of Billings Heights.

As a counterpoint, the City of Billings presents the following information:

1. The City of Billings and the District are presently in litigation in the Supreme Court involving contract questions between the City and the District and questions of PSC jurisdiction over the contract, the City and the District, and questions of water rates for the District.
2. One of the primary questions before the Supreme Court is why the PSC released the District from PSC jurisdiction February 24, 1977. (See attached PSC letter dated February 24, 1977.) So far as the City of Billings is aware, Districts should, under present law, be subject to PSC jurisdiction. The PSC has held that the District is a public utility, but declines to regulate it.
3. The District usually portrays itself as a small entity which the City takes advantage of. The District by its own projections has presently approximately 7,500 residents and projected over 25,000 by the year 2000. In fact, the City only desires that the District pay its own cost-of-service rates. The District opposes doing so. It follows that if the District pays less than it costs the City to supply water to the District, then City rate payers must pay more than their cost of service, in effect, subsidizing the District. The City utilities are operated on a non-profit basis and only

R E M E M B E R

WATER IS PRECIOUS!

PLEASE DON'T WASTE IT!

refuses to acknowledge the clear language of this Act as well as other laws. In view of the PSC's political intransigence, the only recourse available is to limit PSC interference. PSC regulation is unneeded, unwanted, uneconomic, inefficient, and unnecessary.

The nine month regulatory lag cannot be tolerated. The costs of this unnecessary regulation are proliferating boundlessly.

4. The cities' bonding capabilities are being adversely affected. The PSC does not understand bond coverage considerations. The City of Billings, partly because of the high interest rates, is currently still trying to issue \$3.5 million in revenue bonds, for which approval by the PSC was first sought in its 1977 water rate application. Construction costs continue to escalate incredibly in the interim.
5. The PSC would be much better off, as would Montana consumers, if the PSC were to devote its limited resources to regulate private, for profit, utilities which are not subject to voter concurrence in their rate policies.

Respectfully submitted,

The City of Billings

seeks to have each customer segment pay its own cost of service rates as determined by the consulting engineers for the City.

4. If the legislature is in doubt, it can quickly solve the problem by extending the effect of H.B. 765, not only to municipal utilities, but also to the water districts created under the laws of this state.

Respectfully submitted,

The City of Billings

STATEMENT OF PUBLIC UTILITIES BOARD
CITY OF BILLINGS, MONTANA
IN SUPPORT OF HOUSE BILL NO. 765
AUTHORIZING LOCAL GOVERNING BODIES TO ADJUST
MUNICIPAL UTILITY WATER AND WASTEWATER RATES

TO: SENATE LOCAL GOVERNMENT COMMITTEE

The Public Utilities Board of the City of Billings supports the passage of House Bill No. 765.

The Public Utilities Board consists of five lay members, none of which by city charter hold any other elected city office. The Board's purpose is to act in a citizen advisory capacity to the City with respect to all aspects of municipal utilities. The Board may also recommend to the City the adoption of such municipal utility rates, fees and charges as the Board may deem just and proper, subject to other requirements and provisions imposed by law.

The Public Utilities Board supports House Bill No. 765 for the following reasons:

1. If approved, House Bill No. 765 would allow local governing bodies to increase, after public hearing, municipal utility rates not to exceed 15% per year. During inflationary times, such as we are presently experiencing, timely municipal utility rate adjustments are vitally needed to offset the increase in operational costs resulting from inflation;
2. Approval of House Bill No. 765 would permit local governing bodies, in the case of federal and state mandated improvements, to increase municipal utility rates in an amount not to exceed the amounts necessary to pay the principal and interest on the bonds or loans required to finance the local government's share of the mandated improvements. Too frequently federal and state mandated improvements are required to be constructed by local governments without consideration of how the local government can fund such construction. It seems very appropriate that local governing bodies be authorized to increase utility rates to finance the local government's share of any such state and/or federal mandated improvements;
3. House Bill No. 765, if approved, would substantially reduce the costs now normally incurred by municipalities in obtaining state and federal regulatory agency approval of municipal utility rate adjustments;

NAME: Richard J. Feldman DATE: 3-21-61

ADDRESS: 5000-574 Ave. N. W. L-127 F-115 MIT

PHONE: Home 761-4613 work 457-1431

REPRESENTING WHOM? Teachers Local #45

APPEARING ON WHICH PROPOSAL: 765

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

State Gov't, by the State Constitution the Consumer Counsel was established only to defend our consumers in utility rate cases.

The Local officials will make the decision any way & this is true.

Again, I might be repeating myself. Think twice before acting on this Bill.

I want to remind you of 3 reasons why you should NOT pass this Bill out of your Committee:

1- ONE-(1)- The City Commission or the City Council is the one asking for an INCREASE. & the City Commission or the City Council will be the ONE deciding whether the INCREASE will go into effect. Therefore, it is the same body making the decision. This is unlike of before.

2- TWO-(2)- The Consumer Counsel may have to be involved in many cases on the same day. He will have NO control over when hearings are held. Thus placing an extra burden on him, when the PSC should continue to handle this, who is elected for that purpose NOT the Consumer Counsel.

3- THREE-(3)- The people really have NO voice or say anywhere. The

MY TESTIMONY AGAINST H.B. 765 Exhibit F
IN SENATE LOCAL GOV'T. COMMITTEE - Mar. 8, 1981 (1)

I do not know how anyone would get trapped in introducing or supporting such a bad bill as H.B. 765, especially my good friend Representative Gene Donaldson.

The bill is playing right into the hands of the Local Gov't officials, the local officials are looking out for themselves ~~not~~ Citizens. We were elected to protect us Citizens NOT the local officials.

I must remind you what this bill actually does if passed.

I imagine allowing the Local Official of all of our Cities & Towns in Mont to INCREASE their Water & Sewer Rates 15% per year without an expiration date.

This takes away the 15% increase regulating jurisdiction from the PSC entirely, & are elected by the people for that purpose by Law.

The Citizens will ^{lose} any Legal procedure to defend or counter act that they had before to protect themselves. This is terrible, because it states in the Bill the only recourse that ~~that~~ the Citizens have is that ^{they} may be defended by the Consumer Counsel at a hearing. Well, as you all know the Consumer Counsel is NOT a regulating or decision making branch of

STATEMENT OF PUBLIC UTILITIES BOARD
CITY OF BILLINGS, MONTANA
Page Two

4. Duplicative and over-regulation of municipal rates with their attendant costs would be avoided if House Bill No. 765 is approved; and
5. As a citizen advisory Board, we feel the necessary consumer safeguards are set forth in House Bill No. 765 to adequately protect the consumer from paying unreasonable rates for water and wastewater service.

In summary, most municipal water and wastewater utilities are in dire financial condition because of the impacts of inflation over the last several years. Timely utility rate adjustments will mitigate such impacts. Too, the financial integrity of municipal utilities can and should be preserved. This will enable the municipal utilities to effectively maintain and enlarge their water and/or wastewater systems as needed and necessary. Passage of House Bill No. 765 will help to ensure the financial integrity of municipal utilities and at the same time, ensure that the public at large is provided the highest quality of water and wastewater service at the lowest possible cost.

Respectfully submitted,


Vern Dobitz, Chairman
Public Utilities Board
City of Billings, Montana

jbp

People DO NOT want this control taken away from the PSC jurisdiction & their Constitutional rights are gone.

Sincerely yours,
Paul G. Pistoria
State Representative
Great Falls, Mont. District #39

This is my personal letter to this committee.

March 8, 1981

George McCallum, Chairman
Senate Local Government Committee
and Members
Jesse O'Hara
Max Conover
Donald Ochsner
Pete Story
Bill Thomas
Fred Van Valkenburg

I am ardently against H.B. 765, which gives the locally elected and appointed officials of all of the cities and towns in Montana the power to increase their water and sewer rates 15% per year with no set time limit and will go on indefinitely year after year.

This gives the local officials the right to increase the water and sewer rates each year indefinitely and the same body to make their own decision. This is unheard of before in America. We are not a communistic nation; we had better not come to that. This is outright Dictatorship.

This is taking away the jurisdiction from the PSC who are elected for that purpose to protect the citizens. Then why have the PSC, and, by this kind of Legislation, do they want to eventually eliminate the PSC? It surely appears that is the intention of this bill if it passes.

If H.B. 765 passes, the local officials will have us over a barrel because there is no substitute for water. We can't live without it.

The people will have no recourse to protest or have a say any more. The people don't want this jurisdiction taken away from the PSC or their Constitutional rights will be gone.

You Honorable Senators were elected to represent the people that elected you, not the locally elected and appointed officials.

We want to abide by the decision of the PSC.

Therefore, for these reasons we urge your Committee not to pass H.B. 765.

Thank you.

Sincerely yours,

Paul G. Pistoria
State Representative
Great Falls, Mont-
District #39

THIS IS OUTRAGEOUS & UNHEARD OF BEFORE

Listen to this — H.B. 765 introduced by Representative Gene Donaldson, allows All Local Government Officials of all the Cities and Towns in Montana the POWER to increase Water and Sewer Rates 15% each year thereafter WITHOUT an expiration date thus taking away the 15% Water and Sewer Rate Increase Jurisdiction from the PSC, who, by State Law, are elected for the purpose of protecting the Consumers of Montana. This is outright dictatorship. Who would ever expect this to happen in America?



PAUL G. PISTORIA

The Citizens will LOSE any Legal Procedure to defend or to counteract, which they had before to protect themselves if this BILL passes. This is TERRIBLE because it states in the Bill — the only recourse the citizens have is that they may be defended by the Consumer Counsel at a hearing. Well, you should know that the Consumer Counsel is NOT A REGULATING or a DECISION MAKING BRANCH of State Government established by the State Constitution in 1972 only to defend the Consumers in Utility Rate Cases.

Therefore, the Local City Officials will make their own decision.

We must not give this kind of dictatorial POWER to the hungry City Commissioners in Great Falls as designated Mayor Gene Thayer, Hugh Spall, John St. Jermain and Walt Valacich. Walt, you are always saying that you are a peoples advocate, then how does it happen that you have asked me to support this bill and lobbied others to support your for some? Answer all of us.

I ardently opposed H.B. 765 in the House along with Helen O'Connell on 2nd reading. It still passed. But, on 3rd or final reading, I was again able to debate this bill. It still passed but, I was able to gain 15 more votes against the Bill. Note voters of Great Falls: 7 of your Representatives voted for the Bill and 5 of us voted against it.

The Harassing Tribune Management is for City Hall regardless of what they do. Their recent editorials show they are behind this type of Legislation which is for total Local Control.

H.B. 765 will now be heard in the Honorable Senate Local Government Committee on Saturday, March 21, 1981, at 12:30 P.M. in Room No. 405.

We need all of your support to defeat H.B. 765 in order to make your views known to the members of the Senate Local Government Committee. If you write to them, the address is Capitol Station, Helena, Montana 59601. If you call, the telephone number is 1-449-4800.

The Honorable Committee Members are:

(1) George McCallum, Chairman (2) Jesse O'Hara, Vice Chairman (3) Max Conover (4) Donald Ochsner (5) Pete Story (6) Bill Thomas (7) Fred Van Valkenburg.

In Scotty James' Editorial last Sunday, the point was missed entirely. He dealt with another subject which was different than the subject of my H.B. 295 on signatures. He just confused our wonderful citizens. He wasn't even there.

Yes, why don't the Tribune writers sign their Editorials? What are they afraid of? We are forced to give our names. Who are they to tell us what to do. They are not our bosses.

Everytime the Tribune tries to destroy or knock me, it is a boost for me. Keep it up, I love it. I laid off for some time but, from now on, I will give it to the Tribune.

This AD cost me \$231.00. I would appreciate receiving donations to pay for this AD. This is the only way we can fight them. I will never give up fighting for our citizens rights.

Thank you.
March 16, 1981

Sincerely yours,

Paul G. Pistoria

Pol. Ad Pd. for by Paul G. Pistoria, 2421 Central Ave.,
Great Falls, Mont. 59401

Paul G. Pistoria
State Representative

P.S. Ex-Senator George Roskie, what is bothering you? And what are you worried about? Is it because I am still a winner? Can't you take it for being a loser? Your whole problem is being associated with the wrong click and I can't help you George.

FEB. 26th 1960

George McCallum, Chairman
Senate Local Government Committee
and members
Jesse O'Hara
Max Conover
Donald Ochsner
Pete Story
Bill Thomas
Fred Van Valkenburg

THIS IS THE PETITION
TITLE OF THE 719
SIGNATURES.

We, the following property owners living in the City of Great Falls, oppose passage of H.B. 765, which gives the locally elected and appointed officials in every city and town in Montana (a blank check) the power to increase their water and sewer rates 15% each year thereafter with no termination date, and will go on indefinitely year after year.

Imagine the same body who are in power allowing them to make their own decision. Just think what could happen, with this power, in the past some of the larger cities have been caught by the PSC using these funds for other purposes. Now, with the PSC not having this jurisdiction any more on the 15% rate increase for water and sewer, they probably will use some of these funds for other purposes with no strings attached. We do not want this to happen.

How could this happen in America? It is the same as having a Dictatorial form of Government.

The citizens will have no way to protest or take part in their Government any more.

The elected PSC was established by law for that purpose - to protect our citizens. Why should the PSC be by-passed? It looks as if they are trying to eliminate the PSC. We believe our citizens should not lose their constitutional rights.

Think twice before passing this Bill because when you get back home after the session ends, you will have to FACE your constituents for allowing the Local Government officials to raise the water and sewer rates 15% each year by taking away this jurisdiction from the PSC. What will be your answer? Thank God that we have the PSC by law to protect us!

We are the ones that must pay the bill. Therefore, we urge your Committee NOT to pass H.B. 765.

Thank you.

Due to the volume of the petition, copies were not made for this copy of the minutes. If interested in seeing the petition, please see the original set of Senate Local Government Committee minutes.

Tom Hager Testimony on HB 765 Exhibit H

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

618 RADFORD SQUARE

BILLINGS HEIGHTS

BILLINGS, MONTANA 59101

DIRECTORS:
OSCAR M. HARMON, Pres.
JAKE BROMGARD
JAMES HURRY
ROBERT LINDSEY
ROY MOEN
GILBERT RHODES
GORDON SLOVAP

GENE FEHL
GENERAL MANAGER
JUDY MEYERS
SECRETARY
TELEPHONE 252-0539

February 23, 1981

Senator Tom Hager
1824 5th Avenue
Helena, MT 59601

Re: House Bills 765 and 771

Dear Senator Hager:

House Bills 765 and 771 were introduced in an effort to exclude cities and towns from the jurisdiction of the Public Service Commission and allow them to regulate their own rates for water, sewer, etc. HB 765 would allow them to increase their rates 15% every year; but HB 771 would allow them to impose any increase they desire. In almost every session an attempt has been made to do these or similar things, but the legislature has wisely defeated the measures.

As you know, the Montana Supreme Court has held that whenever a city or town sells water or other utilities it is engaged in a proprietary or business function rather than a governmental function, that it is a "public utility" and that it is subject to the jurisdiction of the Public Service Commission which must limit the city or town to reasonable rates or charges for the water, sewer, etc. See the following cases in point:

Public Service Commission v. City of Helena
52 Mont. 527, 159 Pac. 54

Leischner v. Knight
135 Mont. 109, 112; 337 P.2d 359

City of Polson v. Public Service Commission
27 St. Rep. 568; 473 P.2d 508

If either HB 765 or 771 is adopted, every family in our State purchasing its water or sewer for household and domestic purposes from a city or town will be at the mercy of the city or town since they could no longer look to the Public Service Commission for protection against unreasonable rates and charges.

When cities and towns are engaged in the business of selling water they enjoy a monopoly. The people purchasing water from the city or

town cannot obtain it from any other source. History has taught our State and Nation that, under these circumstances, the city or town holding the monopoly must be made subject to the jurisdiction of a public Service Commission in the determination of rates or charges for this is the only way the interests of the consumer can be protected. Whenever the legislature abdicates its duty to regulate monopolies, oppression and confiscatory rates and charges inevitably ensue.

Not long after the legislature created the Public Service Commission and made the rates of cities and towns and all other public utilities subject to the Commission's jurisdiction, the Montana Supreme Court praised the wisdom of the legislature in making the rates subject to Commission regulations. See City of Billings v. Public Service Commission, 67 Mont. 29, 36; 214 Pac. 608, wherein the court said:

"... In creating the commission the intention of the legislature was 'to provide a comprehensive and uniform system of regulation and control of public utilities.' (Billings Gas Co. Case, supra.) This language was approved in Doney v. Northern Pacific Ry. Co., 60 Mont, 209, 199 Pac. 432, and is now approved again. If such was not the intention, then the Act creating the commission was and is a legislative mockery. Prior to the date upon which the Act was passed, every rate to a consumer of a product of a public utility in Montana rested on private contract between the consumer and the utility. Some of these rates were unjust, unreasonable, discriminatory, unduly preferential. To put a stop to practices of that character, to improve the service rendered by public utilities, to cause to be fixed just, reasonable and equitable rates for the services rendered, and to equalize the burden between consumers, manifestly were objects within the legislative intention. . . ."

We represent more than 10,000 people in County Water District of Billings Heights who must buy water from the City of Billings. They are unalterably opposed to HB 765 and HB 771 and any other bill which would remove cities and towns from the jurisdiction of the Public Service Commission and allow them to fix whatever rates they please for water, sewer, etc.

Perhaps the legislators who introduced HB 765 and HB 771 were persuaded to do so by the cities and towns and perhaps these legislators were not aware that such measures have been soundly defeated whenever presented in prior sessions.

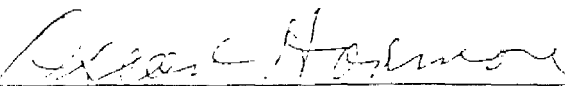
February 23, 1981
page 3

In any event, we respectfully submit that HB 765 and HB 771 should be defeated.

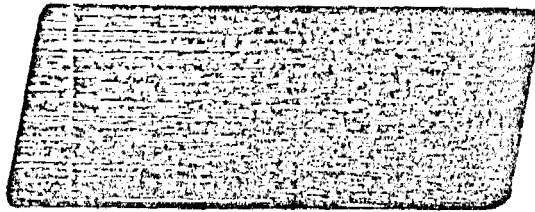
We and many thousands of people throughout the State who purchase water and sewer service from cities and towns shall deeply appreciate anything you can do to defeat HB 765 and HB 771.

Very truly yours,

COUNTY WATER DISTRICT OF
BILLINGS HEIGHTS

By 
OSCAR HARMON

OH/cr



Phone 406-252-9307 or 252-9308

P. O. Box 30181
BILLINGS, MONTANA 59107

March 19, 1981

The Honorable Tom Hager
Montana Senate
Capitol Station
Helena, Montana 59601

RE: House Bill 765 by Donaldson, et. al.

Dear Tom:

On Saturday, March 21, the Local Government Committee will hold a hearing on the above referenced bill.

This bill basically accomplishes two things:

1. Exempts municipal water systems from the jurisdiction of the Public Service Commission.
2. Allows Cities to set their own rates and charges.

Should this bill pass, both of these major provisions will be at the expense of and detriment to all Montana consumers.

My philosophical objections to this bill are as follows:

1. By exempting Cities from the jurisdiction of the Public Service Commission, we would have City Councils acting in a proprietary capacity as the owner of a utility setting rates for its users. City Councils do not have the expertise necessary to make decisions regarding rate base. The provision would be comparable to allowing the Boards of Directors of Montana Power Company, Mountain Bell and Montana-Dakota Utilities to set their own rates.
2. In Montana, there are literally thousands of consumers who use municipal water systems but live outside the corporate city limits. These people have no vote in electing City Councils. By allowing City Councils to set utility rates, these people would be completely disenfranchised.

3. By allowing Cities to increase their rates by 15% per year, they could effectively double their charges every six years. These increases could occur whether or not they are justified. If Cities and Towns want to increase taxes, let them be honest about it and not propose circumventive measures such as this.

Very truly yours,
LLOYD C. LOCKREM, INC.

Sonny

Lloyd C. Lockrem, Jr.
President

LCL/dk

cc: Oscar Harmon, County Water District of Billings Heights
Bill McColley, Local 98, AF of L - CIO
Tom Schneider, Montana Public Service Commission
Jim Lechner, Home Builders Association

Exhibit I

LEGISLATIVE CONSUMER COMMITTEE
REP. JOE OUILICI CHAIRMAN
SEN. ALLEN C. KOLSTAD
SEN. PAUL BOYLAN
REP. EARL C. LORY



JAMES C. LEE
CONSUMER COUNCIL
TELEPHONE 441-2111
400 N. 10TH

MONTANA CONSUMER COUNSEL

34 W. SIXTH AVENUE
HELENA, MONTANA 59601

March 2, 1981

INFORMATION REGARDING PROBLEMS WITH HB 765 -- DEREGULATION OF MUNICIPAL UTILITIES

The following points out some major problem areas we see with House Bill 765 as it is currently drawn.

1. Initially, the Montana Consumer Counsel does not have statutory authority currently to appear before municipal governments. Sections 69-2-201 and 202 provide that the Consumer Counsel may appear at public hearings conducted by the Commission and may also appear in appropriate proceedings "in the state and federal courts and administrative agencies" on behalf of Montana consumers. In addition, the Constitution of Montana, 1972 which established the office of Consumer Counsel provides: "The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies." It would appear that to enable the Consumer Counsel to represent consumers before municipalities would require an amendment to the State Constitution and the Montana Codes.

2. Assuming the above problem can be overcome, there are some very real fiscal and manpower constraints that would result if this bill were passed. There are currently four staff members which make up the Consumer Counsel office. The new section of the bill indicates that only "counsel" may appear before municipal bodies and that would indicate that only the two attorneys that are a part of the Consumer Counsel staff could appear before the municipal governmental bodies. We frankly do not have the time to do an effective job if such is the case. There are over 100 sewer projects and over 25 water projects on the priority list of the Department of Health. Many communities in this state are realizing significant growth which would result in rate relief necessary for their respective utilities. This should give you an idea of the scope of rate increases that may be involved. In other words, there are going to be a great, great many municipalities that would be very active in increasing rates for their utilities should this bill pass.

Jim Lee

A RESOLUTION TO THE MONTANA SENATE ASSERTING SUPPORT OF THE
CITY OF BILLINGS FOR HOUSE BILL 765 WHICH PROVIDES LIMITATIONS
ON PSC JURISDICTION OVER MUNICIPAL UTILITY RATES

WHEREAS, The CITY OF BILLINGS has experienced delays in water rate increases through the PUBLIC SERVICE COMMISSION and has encountered action by the PSC unsatisfactory to the CITY.

AND WHEREAS, The impact of inflation has been so pronounced as to require the CITY to file applications for water rates increases every two years, and potentially to do the same for sewer rate increases;

AND WHEREAS, The PUBLIC SERVICE COMMISSION regulatory control represents merely an unnecessary level of bureaucratic procedure, time-consuming and costly, when the municipalities' major need, at present, is to be able to keep up with inflationary costs;

NOW THEREFORE BE IT HEREBY RESOLVED

That the members of the Montana Senate be advised by the CITY of BILLINGS of the following reasons to support House Bill 765:

1. 45 out of 50 states do not allow their PSC (or equivalent) to regulate municipal utilities.
2. Our Municipal utilities are non-profit operations, seeking to provide service to customers at minimum cost only. Thus, there is not the same reason for regulation as for profit-making utilities.

3. Thirdly, the bill is not clear whether the Consumer Counsel would have discovery powers. And even if he did, the time constraints involved in, for example, the 28-day requirement between publication and hearing, would create serious time problems to receive discovery from the municipalities and make a meaningful analysis of the same. In addition, there is no clear requirement on the part of the utilities to set out specific justification in its request for rate relief and therefore, we may very well be working in a darkroom on most of these cases. Put another way, unless the cities do put together substantial documentation for their rate increases, this office simply will not know whether they are legitimate or not. With all due respect to the municipal utilities, it is doubtful that this office could expect 100% cooperation from each and every municipality in seeking to discover ~~X~~ certain information in a particular hearing.

4. Lastly, while Rep. Donaldson has stated that there are appeal provisions, I fail to see the provisions in the bill. There simply is no section that could be construed as constituting an appeal section.

James C. Paine
Montana Consumer Counsel
34 W. Sixth Avenue
Helena, MT 59601

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 26, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 12:15 p.m.

ROLL CALL: All members were present.

DISPOSITION OF HOUSE BILL 558: Senator Van Valkenburg made a motion to adopt the amendments to the bill. The motion carried unanimously.

Senator Van Valkenburg moved the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 765: Senator Thomas handed out the amendments the subcommittee came up with for the bill. On page 1 they decided to change 15% to 10%. Notice of what an average customer would pay has to be sent within the monthly statement and also posted in the newspaper. On page 3 they have reduced 15% to 10%. The rates may be appealed to district court. If distribution is outside the city they cannot raise rates disproportionately. This is a compromise.

Debbie Schmidt said there was a mistake in the amendments, she would have to add an amendment about requiring people outside of the city to be charged the same amount.

Senator Ochsner asked if 10% was going to keep up with inflation.

Senator Thomas said most people were concerned that 15% was too high, perhaps in two years we can raise it.

Senator McCallum asked Dan Mizner if there was to be an effective date.

Mr. Mizner said he would like July 1, 1981 as the effective date.

Senator McCallum said that was in the bill and it remains effective through July 1, 1983.

Mr. Mizner said 12% to 15% is looking at the cost of living and growth of the cities.

Senator Thomas moved the amendments be adopted.

Senator Van Valkenburg asked that the vote be separated for amendments 2 and 7.

Senator Thomas said there was a major problem with the 15%. He

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moved to amend line 19 to strike "15%" and insert "10%". The motion failed with Senators Hammond, Van Valkenburg, Conover and Ochsner being opposed. Senators O'Hara, Thomas and McCallum were in favor.

Senator Hammond moved to strike "15%" and insert "12%". The motion carried unanimously.

Senator Van Valkenburg thought amendment No. 7 should yield more.

Senator Thomas said it makes it clear that total revenues cannot be raised more than 12% the way it is amended.

Senator McCallum asked Dan Mizner if he had problems with the amendments.

Mr. Mizner answered no.

Senator Van Valkenburg said the language on page 5, lines 6 through 8 is relatively important. It essentially says that municipally owned utilities are not public utilities so the PSC cannot regulate when more than 12%. He thought the committee should amend line 10 on page 4 to read "the rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this act."

Senator Thomas moved the amendments be adopted as amended. The motion carried unanimously.

Senator Thomas moved House Bill 765 be concurred in as amended.

Senator Van Valkenburg can see problems with the Consumer Counsel having to go all around the state.

Senator Thomas said they have to leave it in. There is an agreement on that.

Senator Thomas's motion carried unanimously.

DISCUSSION OF HOUSE BILL 33: Senator Van Valkenburg moved the committee reconsider its action of be not concurred in on this bill. Some members have said they would like to look at the bill again. He would like another chance to look at it with the 51% in the bill.

DISPOSITION OF HOUSE BILL 575: Debbie Schmidt said Senator Turnage was concerned in many ways. Representative Kitselman explained the primary goal is to legalize establishment of a citizen advisory committee to advise county commissioners on proposed amendments to zoning regulations. Page 2, lines 6 through

TO: SENATE LOCAL GOVERNMENT COMMITTEE

SENATOR McCALLUM, CHAIRMAN:

MR. CHAIRMAN AND COMMITTEE MEMBERS:

I AM DEAN SWITZER, REP. DIST. 54.

I SUBMIT THIS TESTIMONY IN FAVOR OF HOUSE BILL 765 ON BEHALF OF THE MAYOR OF CIRCLE, MONTANA. DUE TO THE LONG DISTANCE TO TRAVEL, HE WILL NOT APPEAR IN PERSON. HE STATES THAT HOUSE BILL 765 WILL BE A GREAT HELP TO THEIR ABILITY TO COPE WITH CHANGES DUE TO GROWTH AS WELL AS THE EFFECT OF INFLATION.

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/26/81

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

Coordination w/ HB 765

Amend HB 790, third reading (blue) copy as follows:

1. Page 2, line 25.

Following: "authority"

Insert: "[subject to the provisions of [House Bill 765]]"

2. Page 4.

Following: line 19

Insert: "(4) The bracketed material in section 3 relating to
House Bill 765 is effective."

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/26/81 House Bill No. 765 Time 12:15

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara	✓	
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg	✓	

Gail Stockwell Secretary, Gail Stockwell George McCallum Chairman, GEORGE MCCALLUM

Motion: Senator Thomas moved the bill be
concurred in as amended

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

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MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 765

DONALDSON (HAMMOND)

Respectfully report as follows: That HOUSE Bill No. 765
third reading (blue) copy, be amended as follows:

1. Title, line 8.

Following: "MCA"

Insert: "AND PROVIDING A PERIOD OF EFFECTIVENESS"

2. Page 1, lines 18 and 19.

Following: "raised"

Strike: "more than 15% per year"

Insert: "to yield more than a 12% increase in total annual revenues"

3. Page 1, lines 21 and 22.

Following: "to"

Strike: "pay principal and interest on the bonds or loans"

Insert: "meet the requirements of bond indentures or loan agreements"

4. Page 2, line 7.

Following: "(3)"

Insert: "(a)"

DO PASS

(cont'd)

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5. Page 2.

Following: line 11

Insert: "(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice shall accompany the bill for services of that utility and must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average monthly bill will increase."

6. Page 3, line 6.

Following: "clerk."

Insert: "A copy of each revised rate schedule shall be filed with the public service commission upon final decision."

7. Page 3, line 19.

Following: "increases"

Strike: "in excess of 15%"

Insert: "that yield total revenues in excess of 12%"

8. Page 3, line 20.

Following: "for"

Insert: "mandated federal and state"

9. Page 3, line 21.

Following: "improvements"

Insert: "for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements"

10. Page 4, line 10.

Following: "boundaries."

Insert: "The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of [this act]."

11. Page 4.

Following: line 10

Insert: "NEW SECTION. Section 7. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies. (2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies."

Renumber: subsequent sections

(cont'd)

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12. Page 5, line 2.

Following: "(e)"

Insert: "except as provided in [sections 1 through 6]."

13. Page 5, line 6 through line 8.

Strike: these lines in their entirety

14. Page 5.

Following: line 8

Insert: "Section 9. Period of effectiveness. This act is
effective July 1, 1981 and remains in effect until July 1, 1983."

And, as so amended, BE CONCURRED IN

BA

GEORGE MCCALLUM,

Chairman.